

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5359 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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GUJARAT RAJYA NAGAR PRATHMIK SIKSHAK SANGH

Versus

STATE OF GUJARAT

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Appearance:

Ms.S.Pahwa for M/S THAKKAR ASSOC. for Petitioner  
Mr.S.A.Pandya, learned A.G.P.  
for Respondent No. 1 & 4  
MR BR KYADA for Respondent Nos. 2 & 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/11/98

ORAL JUDGEMENT

Rule. Mr.Pandya, learned A.G.P. and Mr. Kyada have been directed to waive the service of Rule by the Court and accordingly they waive service as ordered by the Court in the facts and circumstances of this case.

In the facts and circumstances of this case, this

Court has thought it proper to decide this Special Civil Application finally at this stage.

The grievance, which has been raised in this petition on behalf of teachers, who are members of Gujarat Rajya Nagar Prathmik Sikshak Sangh, Upleta Unit, is that they are not being paid salary by the respondents and every now and then they have to seek directions from this Court for the purpose of payment of the monthly salary while this Special Civil Application is pending before this Court. Mr. Kyada has submitted that earlier salary had been paid for the month of July as was ordered by this Court on 24.8.98 and, thereafter, the salary has also been paid for the month of September 1998. No salary is now due for the period prior to September, 1998. He submits that whether salary had been paid for October, 1998 or not is not known to him and, he is not in a position to make any definite statement.

It is not in dispute that 95% of the salary is to be paid out of the Government grant in aid and the concerned Municipal School Board has to subscribe only 5% of the pay. Mr. Kyada submits that financial position of Upleta Nagar Palika is not very sound and, therefore, it is not possible to pay 5% share of the salary of the teachers.

Be that as it may, the salary of the employees cannot be withheld nor it can be allowed to remain unpaid for the reasons, as have been disclosed, particularly when 95% of the amount of the salary is paid by the Government Grant in Aid. It is for the concerned Nagar Palika to find ways and means under the law to raise their funds and they have to explore the lawful sources which are permissible under law for the purpose of increasing the revenue of the Municipality but as an employer it cannot sit tight over any part of the salary of any employee.

In the facts and circumstances of this case, it is directed that the teachers, who are working in the concerned Primary Schools under the Municipal School Board of Upleta Nagar Palika, Upleta, District Rajkot, shall be regularly paid the salary month by month without fail. It will be the duty of the respondents Nos. 1 and 4 also to ensure that the concerned employees get their salary month by month because the grant in aid is given by the Government and under the grant in aid Rules it is the duty of the Government to see that the employees, for whose benefits the grant in aid is given to the concerned Institutions, get the salary regularly. It cannot be

said to be a commendable practice for any Nagar Palika not to pay salary to its employees for months together and the teachers, who are discharging their duties, cannot be kept high and dry and without salary. This Court takes a serious view of this matter when the salary has not been paid to the employees and even for the purpose of getting their monthly regular salary they have to approach this Court under Article 226 and it is also noted with shock that the concerned Nagar Palika seeks to oppose even this prayer on a flimsy and jejune ground that the concerned Nagar Palika has no funds even to subscribe 5% of the part of the pay of the teachers when 95% of the salary is paid by the Government. Hence forth it will, therefore, be the joint and several responsibility of all the four respondents to see that the salary reaches the hands of the employees month by month.

This Special Civil Application is accordingly allowed and Rule is made absolute. No order as to costs.